

limiting the sliding movement of said sliding collar.” The Examiner has not set forth any basis for combining the rhythm stick invention set out in Canadian Patent No. 640,801 with the novelty device of the ‘169 reference. Why is it obvious to combine these two references? Where is the motivation found within these two references to combine a musical instrument (rhythm stick) with a novelty device? Moreover, even if there is motivation to combine these two references, the handle 22 element of the present invention serves as the stop element for limiting the travel of collar 14. In the Canadian reference, knob 2 is equivalent to handle 22 of the present invention; however, knob 2 does not have any surface which functions as a stop element. Rather, annular clapper member 11 is fixed to stick 1 at a predetermined point 12 and functions as the stop element in the ‘801 Canadian reference. Incorporating the stop element into handle 22 is advantageous because it reduces material costs (a separate stop element is eliminated) and costs associated with material handling.

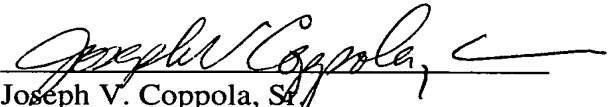
New Claim 11

New claim 11 incorporates the limitations set forth in originally submitted claim 1 and originally submitted claim 8. The Examiner admits that none of the references show a rib element having creased midportion but concludes that it is a mere choice of design providing only a fanciful decorative effect. The undersigned respectfully disagrees. One of the features of the present invention is the dynamics of the movement caused when handle 22 is oscillated. These dynamics are discussed on page 3, second full paragraph of the specification. The crease along the midsection of the ribs gives the plurality of resilient ribs a very distinctive look and dynamic response as handle 22 is rotated 32 and/or oscillated 24. This dynamic response forms an important aspect of the present invention and cuts to the heart of the visual effect presented during use.

64741-002

In view of the above arguments, the undersigned believes that claims 1 and 11, and their respective dependent claims are now in a condition for allowance.

Respectfully submitted,


Joseph V. Coppola, Sr.
Registration No. 33,373
RADER, FISHMAN & GRAUER PLLC
1533 N. Woodward Ave., Suite 140
Bloomfield Hills, Michigan 48304
(248) 594-0650

CERTIFICATE OF MAILING

I hereby certify that the enclosed Amendment Under 37 CFR 1.111 is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231, on this _____ day of _____, 1997.

R0017179